

No. 84-1360

Supreme Court, U.S.

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JOSEPH F. SPANIOLO, JR.
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In The
Supreme Court of the United States
October Term, 1984

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THE CITY OF RENTON, et al,
Appellants,
vs.

PLAYTIME THEATRES, INC.,
a Washington Corporation, et al,
Appellees.

— o —
On Appeal From The United States Court Of Appeals
For The Ninth Circuit

— o —
SUPPLEMENTAL BRIEF OF APPELLEES
— o —

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REASON FOR SUPPLEMENTAL BRIEF

This Supplemental brief is submitted in order to draw the Court's attention to a case not available in time to have been included in Appellees' brief in chief.

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ADDITIONAL ARGUMENT

The core of Appellants' argument to this Court is that a *single* adult theatre causes adverse secondary effects beyond the problems that may be caused by certain businesses concentrating together (Appellants' Brief, 25-26). As pointed out in Appellees' Brief, n.37, no evidence has been offered to support this assertion. In fact, Appellants were not even able to identify the alleged harms at which the ordinance was aimed (Appellees' brief, 24-26). In their Reply Brief (5-6), Appellants perpetuate this specious argument by alleging that "dispersing theatres simply does not solve the underlying problems of adverse secondary effects on residences, schools and the like," without ever identifying what those secondary effects may be. A recent case demonstrates the crumbling foundation on which this argument is constructed.

In *Ebel v. City of Corona*, 767 F.2d 635 (9th Cir. 1985), the Court of Appeals affirmed a decision of the trial court that found a City of Corona adult business zoning ordinance unconstitutional as applied to the plaintiff, Ebel. After a searching factual inquiry, the trial court concluded that the city had not proven that Ebel's adult bookstore led to any of the evils at which the ordinance

was aimed, i.e. deterioration of neighborhoods and corruption of community morals. The trial court “found that Ebel did not ‘substantially subvert’ the purpose of the ordinance and that there was only a ‘minimal effect upon the City’s right to preserve the neighborhood or protect the children or maintain community standards.’” 767 F.2d at 638.

As the court below pointed out, the “studies done by Detroit on the problems of concentrating adult uses are simply not relevant to the concerns of the Renton Ordinance—the proximity of adult theatres to certain other uses.” (App. 19a). Additionally, Justice Powell in *Young v. American Mini Theatres*, 427 U.S. 50, 82, n.5, noted that “[m]ost of the ill effects, however, appear to result from the clustering itself rather than the operational characteristics of individual theatres.” The recent decision in *Ebel* should not be read as standing for the proposition that the introduction of a *single* adult business into a community can never create an adverse secondary effect; rather, it emphasizes the need for each city to “justify its ordinance in the context of [its] problems—not Seattle’s or Detroit’s problems.” (App. 17a).

The result of the factual inquiry undertaken by the trial court in *Ebel* should serve to caution against the relaxation of the burden of proof required of cities enacting content-based restrictions on speech so clearly articulated in *Shad v. Borough of Mount Ephraim*, 452 U.S. 61, 77 (Blackmun, J., concurring), because the alleged secondary effects are “not immediately apparent as a matter of experience.” *Id.* at 73.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,
JACK R. BURNS